Supreme Court, U.S.
FILED
FEB 12 1987
JOSEPH F. SPANIOL, JR.
CLERK

Nos. 86-1140 and 86-1161

In The

Supreme Court of the United States

October Term, 1986

OTIS R. BOWEN, Secretary of Health and Human Services,
Appellant,

vs.

VERNITA BALDWIN, *et al.*,
Appellees.

JAMES G. LEDBETTER, In his official capacity as Commissioner of the Georgia Department of Human Resources,
Appellant,

vs.

VERNITA BALDWIN, *et al.*,
Appellees.

On Appeal from the United States District Court for the Northern District of Georgia

MOTION TO AFFIRM

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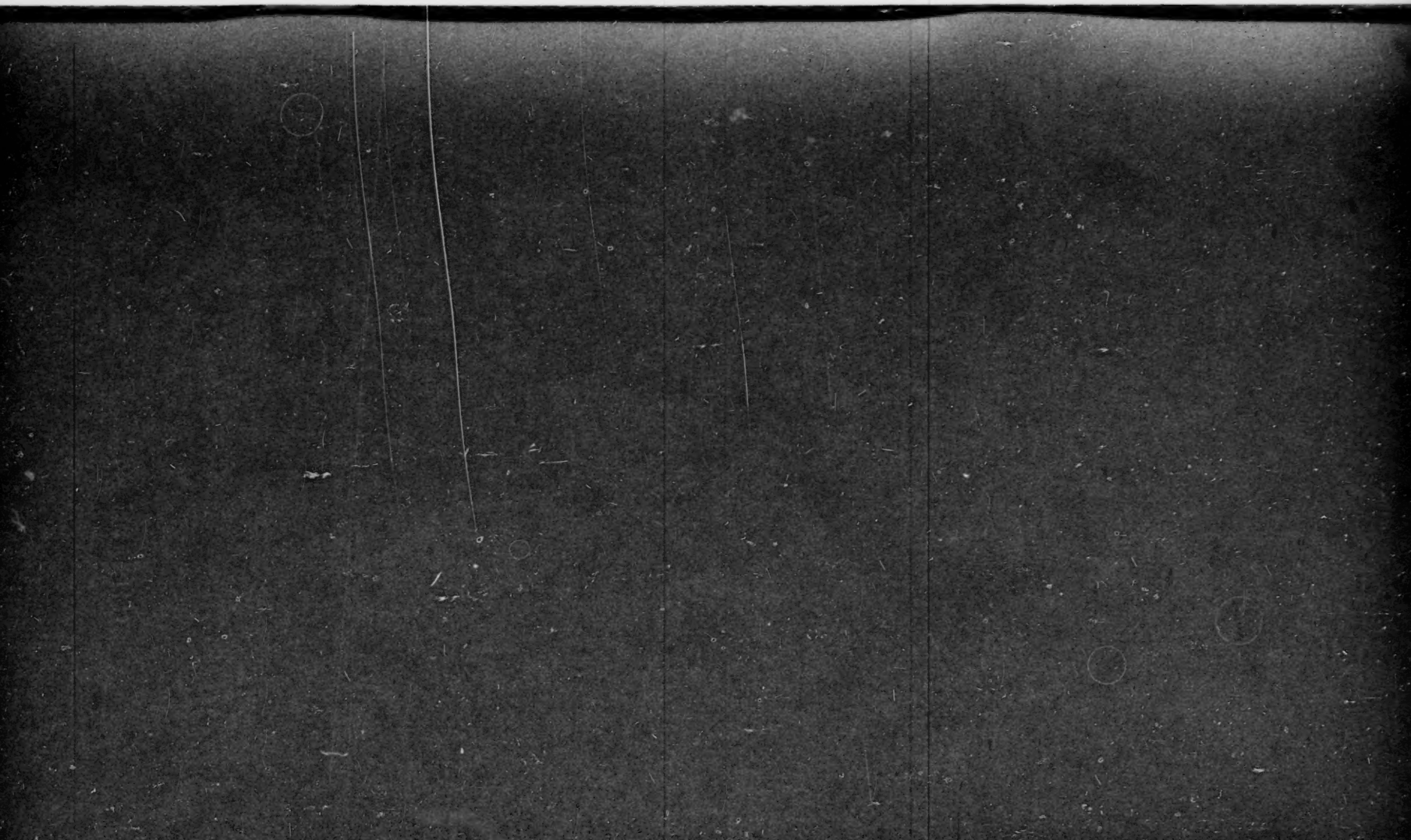
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31 pp



QUESTIONS PRESENTED

1. Whether Section 402(a)(38) of the Social Security Act, 42 U.S.C. § 602(a)(38), which the District Court found requires non-needy children to become welfare recipients and assign their child support to the State in order for their needy half-siblings to receive Aid to Families with Dependent Children, effects a taking of the property of appellee child support recipients.

2. Whether 42 U.S.C. § 602(a)(38) violates the substantive due process rights of appellee child support recipients by directly interfering with the liberty interests of the children to the support and nurturance of their absent parents.

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The jurisdictional statements in these appeals raise basically the same two issues, which address the meaning and constitutionality of Section 402(a)(38) of the Social Security Act. First, as framed more narrowly by the state appellant,[1] is the question of whether Section 402(a)(38)

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[1] The federal appellant frames the issue as a filing unit one only: "[w]hether Section 402(a)(38) of the Social Security Act, 42 U.S.C. (Supp. II) 602(a)(38), which provides that all parents, brothers and sisters who live together shall constitute a single filing unit for purposes of the Aid To Families With Dependent Children (AFDC) program, is unconstitutional as violative of the Takings Clause or the Due Process Clause of the Fifth Amendment."

of the Social Security Act, 42 U.S.C. § 602(a)(38), the sibling deeming rule, which the district court found requires non-needy children to become welfare recipients and assign their child support to the state in order for their needy half-siblings to receive Aid to Families with Dependent Children, effects a taking of the property of appellee child support recipients. The second question is whether 42 U.S.C. § 602(a)(38) violates the substantive due process rights of appellee child support recipients by directly interfering with the liberty interests of the children in the support and nurturance of their absent parents. Appellees move this Court to affirm the district court's decision.

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A. Summary of the Proceedings

Appellees, Vernita Baldwin and her three children, Schlonda, Lapheitta, and Wilnetta, Aid to Families with Dependent Children [hereinafter cited as AFDC] recipients, and children formerly supported by child support, filed a statewide class action suit on October 29, 1985, in the United States District Court for the Northern District of Georgia challenging the constitutionality of 42 U.S.C. § 602(a)(38), and corresponding federal and state regulations. Appellees sought declaratory and injunctive relief to prohibit appellants from requiring the custodial parent of children who receive child support payments to apply for AFDC benefits and assign the child support payments to the state as a condition of their needy half-siblings' eligibility for AFDC pursuant to 42 U.S.C. § 602(a)(26)(A).

On July 1, 1986, the district court certified two sub-classes of mothers and children who receive AFDC and are affected by Section 602(a)(38). The first sub-class is comprised of all present, past, and future AFDC recipients or applicants in Georgia who have had, or may have benefits denied, reduced, or terminated due to appellants' challenged regulations and statute. The second sub-class is comprised of all past, present, and future minors who are recipients of legally restricted child support who have had or may have to apply involuntarily for AFDC benefits, or leave their AFDC-recipient family unit because of appellants' challenged statute and regulations. In the same Order, the district court granted the Motion to Intervene of Brenda Maffett on behalf of herself and her children Tanya Maffett, Herley Maffett, Jermaine Maffett, Regina Maffett, and Melissa Maffett.

On October 17, 1986, the district court issued an Order granting appellees' Motion for Summary Judgment, declaring unconstitutional Section 602(a)(38), and granting appellees a permanent injunction. The district court found Section 602(a)(38) violated the constitutional rights of appellee children with child support who live with AFDC recipient half-siblings in two respects. First, Section 602(a)(38) effects a taking without just compensation, and second, it abridges appellee child support recipients' substantive due process rights.

The district court found that Section 602(a)(38) effects a taking of the child support of recipients without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The court concluded that child support recipients have a property interest in the support defined by Georgia state law. *Bald-*

win v. Ledbetter, 647 F. Supp. 623, 631 (N.D. Ga. 1986). The court found "[b]ecause child support payments over and above the $50 disregarded[2] are paid to the AFDC family unit in satisfaction of a portion of the payment standard for the family, there is undeniably a diminution in the value of the child support recipient's property interest." *Id.* at 631-32 (footnote added). The court also recognized the non-voluntary nature of the sibling deeming rule which forces children like Wilnetta and Lapheitta Baldwin to support their sister whom they are not legally obligated to support. In finding that the taking was without just compensation, the court stated that it could not conclude that the

> rather intangible guarantees which defendants postulate amount to just compensation would be equivalent to a cash payment of the amount of child support payments which child support recipients are now forced to spend upon the AFDC family unit. For example, the court cannot assume that Wilnetta and Lapheitta Baldwin would accept the status of a ward of the state in return for anything less than the payment in cash of the money which they are forced to spend on the other members of their family.

Id. at 634.

The district court also held that Section 602(a)(38) violates the fundamental liberty interest of a child support recipient to the support and nurturance of his or her parent. The court applied a rigorous or heightened scrutiny test in its analysis of the statute after finding there

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[2] The first fifty dollars ($50) of any child support received by or on behalf of an AFDC family is paid to the family and not considered in determining the family's AFDC grant amount. 42 U.S.C. § 602(a)(8)(A)(vi).

was a direct and substantial interference with the rights at issue.

> In particular, these children stand to lose the two essential attributes of parenthood which this court has identified as at stake. First, these children face the prospect of less nurturing and guidance from their non-custodial parent as a result of fewer contacts with that parent. The non-custodial parent is apt to be discouraged from continuing to play a supportive role when his or her money is being collected by the state and paid to other children. Such resentment is evidenced by the record. Maffett Aff., ¶¶13-20. The mere interposition of the government as paying agent may itself mean less contacts with the child.

Id. at 639.

Recognizing these constitutional infirmities[3] with the statute, the district court enjoined the state appellant from terminating or reducing grants based on child support income received by co-resident siblings who do not choose to apply for or receive AFDC. *Id.* at 640-41. On October 22, 1986, the district court orally ordered the parties to agree upon a knowing and voluntary waiver form for the custodial parent to sign regarding the two constitutional

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[3] The district court rejected appellees' other constitutional arguments. The court found that appellees were not the proper parties to raise a claim that the statute violates the Tenth Amendment by intruding impermissibly into state family law, an area traditionally regulated by state law. The court found there "is nothing inherent in the full faith and credit statute [28 U.S.C. § 1738] which limits congressional action taken in amending the AFDC family filing unit." *Id.* at 635. The court also concluded the Contract Clause does not limit Section 602(a)(38). Appellees' equal protection and procedural due process claims also were rejected. Procedural due process consideration was not necessary because of the court's finding that child support recipients suffer a taking without just compensation.

issues if the parent chooses for the child with child support to continue on AFDC. The oral order was reduced to writing in an Order dated November 17, 1986.

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B. Statutory and Regulatory Framework

Congress created the AFDC program in 1935 under Title IV, Part A of the Social Security Act, 42 U.S.C. §§ 601-76. AFDC is a cooperative federal-state public assistance program intended to provide financial aid to needy and dependent children in their own homes or those of relatives in order to preserve and strengthen family life. *Id.* § 601. The United States Department of Health and Human Services [hereinafter cited as HHS] now administers the program on the federal level, and the Georgia Department of Human Resources [hereinafter cited as DHR] on the state level.

Under the AFDC program, benefits are paid and administered by states electing to participate in the program. In order to participate, however, a state must first obtain approval of its plan by HHS and the plan must conform with federal law. 42 U.S.C. § 604. States which administer an approved AFDC program can obtain from the federal government a percentage of the benefits paid and the administrative costs incurred. *Id.* § 603.

The Social Security Act requires that as a condition of eligibility for AFDC, the caretaker parent must cooperate in obtaining support payments from the absent parent, 42 U.S.C. § 602(a)(26)(B), and assign the child's

support payments to the state welfare department. *Id.* § 602(a)(26)(A). States which participate in the AFDC program must establish a separate organizational unit for child support collection activities. 42 U.S.C. § 651 *et seq.*

Only "dependent" children within the meaning of 42 U.S.C. § 606(a) are eligible for AFDC benefits. In order to be "dependent," the child not only must show financial need, but must also establish that he or she is deprived of parental care or support because one or both parents are dead, absent from the child's home, or incapacitated.

The amount of payment to a family receiving AFDC also depends upon the income and resources that are actually and legally available to provide for the support and maintenance of those claiming aid. 42 U.S.C. § 602(a)(7); 45 C.F.R. § 233.20(a)(3)(ii)(D). *See Van Lare v. Hurley,* 421 U.S. 338 (1975); *Lewis v. Martin,* 397 U.S. 552 (1970); and *King v. Smith,* 392 U.S. 309 (1968). "To determine the income eligibility of grant group and/or the amount of the assistance payment, a budget or series of budgets must be computed based upon the Ceiling Test limit, the Standard of Need for Georgia, and/or the Payment Standard for Georgia." Georgia Department of Human Resources *Assistance Payments Manual,* page 1 of IV-115. If the grant group meets the ceiling test, then eligibility and grant amount are determined by reference to the state standard of need and the payment standard. The "standard of need" is a "fixed amount, established by the State,

that is a compilation of the *basic* budgetary needs for a specific number of persons for a calendar month." *Id.* (emphasis added).

The "payment standard" is "the maximum amount that can be paid to a specified AFDC household size for a calendar month. The AFDC Payment Standard in Georgia is based on a percentage of the Standard of Need. This percentage is subject to change dependent upon funding for the AFDC program in Georgia." *Id.* at 4. In Georgia the payment standard as of April 1986 is seventy percent of the standard of need; previously it was sixty-one percent. In other words, the *absolute maximum* amount of AFDC a given group can receive is seventy percent of the amount needed for *basic subsistence.* Moreover, Georgia's standard of need currently is only forty-five percent of the federal poverty level which means that Georgia AFDC recipients can receive a maximum AFDC payment of only thirty-two percent of the poverty level. *See* 51 Fed. Reg. 5106 (Feb. 11, 1986).[4] Clearly, for individuals living at this absolute low end of the income scale, even minor reductions in AFDC payments would inevitably have major, irreparable and devastating effects on a family's ability to survive.

The amount of any grant received by an AFDC assistance group, with no income or unearned income only, is determined by subtracting the monthly "income" of the assistance unit from the state's monthly payment stan-

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[4] For one person, the Standard of Need is two hundred and two dollars ($202) and the Payment Standard is one hundred forty-one dollars ($141) per month. The federal poverty level for one person is four hundred forty-seven dollars ($447) per month.

dard. The amount remaining will be the unit's AFDC monthly grant.

Until the passage of the Deficit Reduction Act of 1984, HHS and DHR did not consider legally restricted child support available to other children in a family who were otherwise eligible for AFDC. A child who received legally restricted child support did not have to apply for AFDC benefits. If the child was receiving AFDC benefits before support payments began, the supported child could be removed from the grant, the assignment of support could be terminated, and the support would be paid directly to the caretaking parent on behalf of the child. 42 U.S.C. § 657(c); 45 C.F.R. §§ 232.20(a)(1), 302.32(b).

The Deficit Reduction Act of 1984, effective October 1, 1984, amended the Social Security Act to require that under certain circumstances the "income" of a half-sibling or a non-needy child must be considered in determining the AFDC eligibility of the needy child. 42 U.S.C. § 602(a)(38). The amendment at paragraph (38) provides that

> in making a determination under paragraph (7) with respect to a dependent child and applying paragraph (8), [regarding income disregarded], the state agencies shall (except as otherwise provided in this part) include—
>
> . . .
>
> (B) Any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of Section 606(a), if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister

> shall be included in making such determination and applying such paragraph with respect to the family . . . .

Then-Secretary Heckler promulgated interim final regulations purporting to implement the sibling deeming rule at 49 Fed. Reg. 35586, 35599 (Sept. 10, 1984), codified at 45 C.F.R. § 206.10(a)(1)(vii)(B). This regulation mandates that a state plan require

> (vii) [f]or AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> . . .
>
> (B) Any blood-related or adoptive brother or sister.

The legally restricted child support payments then are considered in determining the eligibility of the child's half-siblings, 45 C.F.R. § 233.20(a)(1), and must be assigned to DHR. 42 U.S.C. § 602(a)(26)(A); 45 C.F.R. § 232.11 (a)(1)(i).

Defendant Ledbetter, Commissioner of the Georgia Department of Human Resources, promulgated Eligibility Services County Letter No. 84-44 in which he notified all county Departments of Family and Children Services that

> [b]eginning October 1, 1984, the needs and income of the parent(s) and all minor siblings or half-siblings living with a dependent child who applies for or receives AFDC must be included for eligibility determination and benefit calculation. SSI recipients, step-brothers, and step-sisters are excluded from this requirement. In other words, an A/R [applicant/re-

> cipient] will no longer have the option to voluntarily exclude the needs or income of herself or a child from a grant. Similarly, there is no longer any restricted income.
>
> As stated, the A/R does *not* have the option to exclude any family member. Therefore, if the A/R refuses to include the income and needs of a child or herself or we are unable to verify the income of a previously excluded child, total ineligibility of the entire group results as we are unable to determine eligibility.

The Child Support Amendments of 1984 added 42 U.S.C. § 602(a)(8)(A)(vi) which provides that up to the first fifty dollars child support income collected for an AFDC grant group will be disregarded in calculating the AFDC grant. The only legislative history is that a "monthly disregard of $50 of child support received by a family is established. The disregard is applied at eligibility determination and benefit calculation. The provision is effective October 1, 1984." H. CONF. REP. NO. 861, 98th Cong., 2d Sess. 1407, reprinted in 1984 U.S. CODE CONG. & AD. NEWS 1407, 2095.

Under Georgia law, biological parents have a statutory duty to support and maintain their children. O.C.G.A. §§ 19-7-2 and 19-7-24 (1982). Court ordered child support is a substitute for this statutory duty and is designed to provide a child with his or her customary needs commensurate with the non-custodial parent's ability to pay. *See Clavin v. Clavin*, 238 Ga. 421, 233 S.E.2d 151 (1977); *Golden v. Golden*, 230 Ga. 867, 199 S.E.2d 796 (1973). The custodial parent has a fiduciary duty to spend court ordered support monies for the sole benefit of the child for whom support is paid. *Stewart v. Stewart*, 217 Ga. 509,

123 S.E.2d 547 (1962); *Thomas v. Holt*, 209 Ga. 133, 70 S.E.2d 595 (1952). A court in equity may remove a child from the custody of a parent who breaches this duty or impose liability for loss of restricted support monies on said parent. O.C.G.A. § 53-13-84 (1982). Moreover, if the putative father of illegitimate children freely and voluntarily contracts with the mother to support said children, these children, as third party beneficiaries can sue to enforce their contractual rights to support. *Worthington v. Worthington*, 250 Ga. 730, 735, 301 S.E.2d 44 (1983).

Section 602(a)(38) imposes inconsistent legal obligations on the caretaker. On the one hand, under the sibling deeming rule with the supported child included in the AFDC unit, the caretaker might attempt to meet his or her legal obligations by using an amount equal to the child support to meet the needs of the supported child. This conduct violates the Social Security Act which requires the caretaker to use AFDC benefits in the best interests of the child for whom they are paid. 42 U.S.C. § 605. On the other hand, if the caretaker fails to use a reasonable portion of the AFDC for the unsupported children, the state may provide for protective payments, 42 U.S.C. § 606(b)(2), payment to a legal representative, 42 U.S.C. § 1311, or may remove the needy child from the home. 42 U.S.C. §§ 605, 672(a)(1).

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C. Summary of the Facts

The Baldwin and Maffett families exemplify the operation and harsh effects of the sibling deeming rule. *Baldwin v. Ledbetter,* 647 F. Supp. at 627-28. Vernita Baldwin is the mother of three minor children: Wilnetta, Lapheitta, and Schlonda Baldwin. Prior to October 1, 1984, Ms. Baldwin and Schlonda received AFDC in the amount of one hundred seventy-four dollars ($174) per month, the maximum grant amount for an assistance group of two at that time. Schlonda's father, Bobby Ellison, paid child support to the Muscogee County Child Support Recovery Unit. Wilnetta and Lapheitta received two hundred dollars ($200) each month in child support from their father, Willie King, pursuant to a court approved agreement.

Effective October 1984, Ms. Baldwin was forced to include all three children in the AFDC grant rather than risk losing eligibility for Schlonda and herself. Although the payment standard for four persons was two hundred forty-five dollars ($245), the Baldwins' AFDC grant was reduced to ninety-five dollars ($95) due to the sibling deeming rule. The total monthly income for four persons was reduced from three hundred seventy-four dollars ($374) to two hundred ninety-five dollars ($295), including the fifty dollars ($50) disregard. Moreover, as a condition of AFDC eligibility Ms. Baldwin was required to assign to the state the child support rights of Wilnetta and Lapheitta pursuant to 42 U.S.C. § 602(a)(26)(A).

Brenda Maffett on behalf of herself and five children intervened as Plaintiffs. Prior to 1984, Ms. Maffett received AFDC for herself and some of her children. Her daughter Melissa Maffett was not included in the AFDC

grant because her father Tyrone Davis was supporting her by paying ten dollars per week to Ms. Maffett. He also would take her to the doctor when she needed to go. Ms. Maffett used Melissa's child support to take care of her needs.

As a result of the sibling deeming rule, Melissa was placed on AFDC against Ms. Maffett's wishes. Although her inclusion did not result in a loss of income to the Maffett family because the child support payments were less than the payment standard, the sibling deeming rule caused Ms. Maffett problems with Melissa's father. Mr. Davis has been harassed by the child support enforcement officials. Mr. Davis does not like this involvement and the fact that his child support will go to support Ms. Maffett's other children. He informed Ms. Maffett that if he had to continue to deal with the child support officials, that he would stop coming to see Melissa and just mail the child support.[5]

The experiences of these two families demonstrate some of the problems which result from the sibling deeming rule. Forcing children who receive child support onto welfare and to assign their support rights to the state merely because they live with half-siblings who need to receive AFDC is unacceptable. Before the 1984 amendment of § 602(a)(38), families could choose whether independently supported children would apply for AFDC. The sibling deeming rule causes the reduction or termination

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[5] This result also is acknowledged by expert testimony. *See* Declaration of Judith Cassetty, 9-11, Attachment B to Opposition to Application for Stay on Appeal of Judgment of the United States District Court for the Northern District of Georgia.

of AFDC benefits merely because one or more children receive child support. This rule is mandatory despite its conflict with state court orders and law which require the custodial parent to use the support solely for the benefit of the child. Moreover, the sibling deeming rule affects families in which the parents do not wish a particular child to receive AFDC merely because the child lives with needy half-siblings. The district court correctly found the sibling deeming rule violates the rights of the appellee child support recipients. The court's decision provides a choice for the custodial parent whether the child should be placed on AFDC.

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ARGUMENT

The question of the constitutionality of 42 U.S.C. § 602 (a)(38) is an important issue for all states as well as applicants, recipients and those terminated from AFDC due to the statute's application. A summary affirmance of the district court's decision would require lower courts to declare unconstitutional this provision. In light of the court's noting of probable jurisdiction on December 8, 1986, in the similar cases of *Bowen v. Gilliard,* No. 86-509, and *Kirk v. Gilliard,* No. 86-564, appealing 633 F. Supp. 1529 (W.D.N.C. 1986), appellees recognize the Court probably will note jurisdiction on these substantial questions. However, appellees assert that the district court's decision should be affirmed.

The federal appellant included copies of his Jurisdictional Statements in the *Gilliard* and *Bowen v. Lesko,* No.

86-744, cases with his Jurisdictional Statement in the instant case. In these statements the federal appellant lists the large number of cases which are pending in the lower courts on the sibling deeming rule. The appellees in *Gilliard* not only seek affirmance but alternatively request constitutional review of Section 602(a)(38) as applied to the facts of the case. If the Court limits its ruling to the facts in *Gilliard*, appellees request the opportunity for full briefing and oral argument.

A. The District Court Correctly Found That 42 U.S.C. § 602(a)(38) Works A Taking Of Appellee Child Support Recipients' Property

The lower court employed the proper analysis in reaching its decision that the sibling deeming rule effects a taking without just compensation of the property of appellee child support recipients who live with half-siblings who receive AFDC. In Count Two of their Complaint, appellees alleged the sibling deeming rule, 42 U.S.C. § 602(a)(38), deprives appellees of property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

The first step in this analysis is whether there are property interests at issue which are protected by the Fifth and Fourteenth Amendments. The court found Georgia state law recognizes the children's property interest in the support. Moreover, the court acknowledged that

> [i]n addition to mandating an enforceable right to child support on behalf of minor children, Georgia law requires that the custodial parent spend child support monies for the benefit of the child. [*Thomas v. Holt*, 209 Ga. 133, 170 S.E.2d 595 (1952)]; *see also Stewart*

> *v. Stewart,* 217 Ga. 509, 123 S.E.2d 547 (1962). That is, the custodial parent acts as trustee of the child support monies for the child as beneficiary. *Id.*

Baldwin v. Ledbetter, 647 F. Supp. at 631.

The second step of the district court's analysis is the extent to which the appellee child support recipients suffer a reduction in the value of their child support. Prior to the enactment of the sibling deeming rule, Wilnetta and Lapheitta Baldwin each had the right to one hundred dollars per month in child support paid by their father. After October 1, 1984, their two hundred dollars is pooled by the state in determining the amount of the entire family's AFDC grant minus the fifty dollar disregard. Thus, Wilnetta and Laphietta only receive a pro rata share of the AFDC, including the disregard, in the amount of two hundred ninety-five dollars ($295). "In short, child support recipients in the position of Wilnetta and Lapheitta Baldwin are coerced by the amendment into supporting those they have no obligation to support, and this will always be the case where the amount of income deemed is greater than the amount of government assistance paid." *Id.* at 632 (footnote omitted).

The state appellant argues that whatever taking of child support occurs is compensated for by the family's access to the state's child support collection services. These services, however, are available for the asking, even to non-AFDC families, pursuant to 1984 statutory changes that require states to provide child support recovery services to families that request them. Non-AFDC families pay a nominal annual fee. 42 U.S.C. § 654(4)(B)(6); 45 C.F.R. § 302.33. On the other hand, governmental actions

to enforce child support payment can be detrimental, rather than beneficial, to the family, as the court below recognized. *Baldwin v. Ledbetter,* 647 F. Supp. at 627-28. Thus, the alleged "compensation" offered by the state is not an unmixed blessing.

Further, state appellant asserts that the receipt of medical assistance, or Medicaid, is further compensation for the deprivation of child support. Medicaid is only a benefit if one needs medical assistance; it is not necessarily "just" compensation for the deprivation of a specific amount of cash each month. Moreover, the children here may have been eligible for Georgia's medical assistance program in any case, as appellees argued below. Further, the record does not demonstrate appellees received Medicaid benefits, notwithstanding the state appellant's assertion to the contrary. State Appellant's Jurisdictional Statement at 5.

The state appellant contends the operation of the sibling deeming rule does not directly take child support from any child. However, when the custodial parent is forced to assign his or her child's rights to child support to the state as a condition of eligibility for AFDC, the custodial parent, on behalf of the child, loses the child support. Therefore, there is a direct taking of the child's money which is prohibited. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith,* 449 U.S. 163-65 (1980).

The state appellant relies upon cases concerning the limits of permissible commercial regulation to support his position on this issue. However, as the district court recognized, "unlike the economic actors in those cases, child support recipients have not subjected themselves to the

risk of regulation of the use of their child support payments. The coercive nature of the amendment makes clear that child support recipients do not voluntarily subject themselves to AFDC regulations." *Baldwin v. Ledbetter*, 647 F. Supp. at 633. Moreover,

> [b]ecause the state has collected [the child support] for the AFDC family unit, [the child support recipients] no longer have the right to possess the money themselves and the consequential power to exclude the state and its AFDC dependents from possession and use of the money. . . . Indeed, they are forced to use their property for the benefit of others. If the taking clause means anything, it means that the government cannot force child support recipients "to bear public burdens which in all fairness should be borne by the public as a whole."

Id. (citations omitted).

Appellants minimize the loss of support each month by appellee child support recipients. The Constitution, however, forbids *any* taking of property without just compensation; it is not limited to protecting property greater than a certain value. Proportionately, the loss to these children is extremely significant; it amounts to twenty-six percent of their entire monthly income. The equivalent for a person with a monthly income of one thousand dollars ($1,000), would be two hundred sixty dollars ($260), also clearly significant. Even if the amount of child support taken each month from class members is relatively small, in terms of actual dollar figures, it is their property. These children have been supported by their absent parents and should continue to be so supported. However, 42 U.S.C. § 602(a)(38) forces non-custodial parents to support children who are not theirs and takes without just

compensation the property of appellee child support recipients. Moreover, the sibling deeming rule requires non-needy, supported children to apply for AFDC or force their half-siblings to live without public assistance. This conflict does not strengthen family relationships, but rather severely diminishes a family's ability to survive. The district court analysis should be affirmed by this Court.

B. The District Court Correctly Found That 42 U.S.C. § 602(a)(38) Violates Appellee Child Support Recipients' Substantive Due Process Rights

In its October 17, 1986 Order, the district court found that 42 U.S.C. § 602(a)(38) violated appellee child support recipients' substantive due process rights. *Baldwin v. Ledbetter*, 647 F. Supp. at 639. The trial court recognized that the child support recipients' liberty interests were violated by the sibling deeming rule. The court further acknowledged the fundamental right of the child "to enjoy the nurturing and guidance afforded by a parent willing to discharge his or her obligations. . . . The fact of parental support is perhaps as important as any value which a parent can pass along to a child." *Id.* at 638.

This Court previously has acknowledged the tradition of preserving the sanctity of the family unit. In *Gilliard*, the district court cites *Moore v. City of East Cleveland*, 431 U.S. 494, 499 (1977) which addressed this fundamental right.

> [F]amily life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. *Cleveland Board of Education v. LaFleur,* 414 U.S. 632, 639-40, 94 S.Ct. 791, 796, 39 L.Ed.2d 52 (1974). A host of cases, tracing their lineage to *Meyer v. Nebraska,* 262 U.S. 390, 399-401, [43 S.Ct. 625, 626-627, 67 L.Ed. 1042] (1923), and *Pierce v. Society of Sisters,* 268 U.S. 510, 534-35, [45 S.Ct. 571, 573, 69 L.Ed. 1070] (1925), have consistently acknowledged a "private realm of family life which the state cannot enter." *Prince v. Massachusetts,* 321 U.S. 158, 166, [64 S.Ct. 438, 442, 88 L.Ed. 645] (1944). *See, e.g., Roe v. Wade,* 410 U.S. 113, 152-153, [93 S.Ct. 705, 726, 35 L.Ed.2d 147] (1973); *Wisconsin v. Yoder,* 406 U.S. 205, 231-33, [92 S.Ct. 1526, 1541-42, 32 L.Ed.2d 15] (1972); *Stanley v. Illinois,* 405 U.S. 645, 651, [92 S.Ct. 1208, 1212, 31 L.Ed.2d 551] (1972); *Ginsberg v. New York,* 390 U.S. 629, 639, [88 S.Ct. 1274, 1280, 20 L.Ed. 2d 195] (1968); *Griswold v. Connecticut,* 381 U.S. 479, [85 S.Ct. 1678, 14 L.Ed.2d 510] (1965). . . . [additional citations omitted].

Gilliard v. Kirk, 633 F. Supp. at 1556. This line of cases employs a strict scrutiny standard, rather than the lower standard argued by appellants. The district court correctly employed a heightened scrutiny analysis urged by appellees because § 602(a)(38) is not merely social welfare legislation; it also impinges on familial rights, thus fundamental rights are involved.

While the facts in this case and the specific right to be supported and nurtured by one's non-custodial parent have

not been before this Court, the fundamental right is implicit in prior cases.[6] As the Court acknowledged in *Moore,*

> [t]o be sure, these cases did not expressly consider the family relationship presented here. They were immediately concerned with freedom of choice with respect to childbearing, *e.g., LaFleur, Roe v. Wade, Griswold, supra,* or with the rights of parents to the custody and companionship of their own children, *Stanley v. Illinois, supra,* or with traditional parental authority in matters of child rearing and education. *Yoder, Ginsberg, Pierce, Meyer, supra.* But unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the Fourteenth Amendment's Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case.

Moore v. City of East Cleveland, Ohio, 431 U.S. at 500-01.

The loss of child support each month by two of Ms. Baldwin's children may not appear to be a large amount, but the amount does not denigrate these children's fundamental right to their support.[7] The family's total income

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[6] State appellant cites *Lyng v. Castillo,* 477 U.S. —, 106 S.Ct. 2727 (1986) in support of its position that there is no direct and substantial interference with a fundamental right. However, unlike the food stamp recipients in *Castillo,* the appellee child support recipients like Wilnetta and Lapheitta Baldwin were not AFDC recipients before the enactment of the sibling deeming rule. *Castillo* also involves a federal regulation which keeps families together whereas the sibling deeming rule could cause families to split, at the same government's convenience. Moreover, enabling families to live together, particularly ones with small children, furthers the purpose of AFDC.

[7] The appellee child support recipients' state court orders also are violated by the sibling deeming rule. State courts never contemplate that the court ordered amount would be used to support other children who do not belong to the support-paying parent; indeed it would be unlawful for a court to do so given that there is no legal obligation on the parent to support those other children.

was reduced from three hundred seventy-four dollars ($374) to only two hundred ninety-five dollars ($295). Moreover, the record does support the trial court's conclusion that the children with child support in the class can lose the nurturing and guidance of their non-custodial parents. Declaration of Judith Cassetty, *supra.* Moreover, the denial of a child's right to support, guidance and nurturing by a non-custodial parent is not rationally related to Congress' alleged objective of reducing the federal deficit. Appellees submit this Court should look to the basic principles of our Constitution and find that this statute offends those relied upon by the district court.

CONCLUSION

This case should be affirmed. Alternatively, the Court should consider this case based on its disposition of *Bowen v. Gilliard,* No. 86-509, and *Kirk v. Gilliard,* No. 86-564. If the Court finds Section 602(a)(38) unconstitutional as applied to the facts in *Gilliard,* appellees request an opportunity for full briefing and oral argument.

Respectfully submitted,

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February 1987

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